

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

<p>SHELBY COUNTY, TENNESSEE,</p> <p style="padding-left: 40px;">Plaintiff,</p> <p>v.</p> <p>GOVERNOR BILL LEE, in his official Capacity as GOVERNOR OF THE STATE OF TENNESSEE,</p> <p style="padding-left: 40px;">Defendant.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case 2:21-cv-02550-SHL-atc</p>
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**MOTION AND INCLUDED MEMORANDUM OF DEFENDANT
FOR CONTINUANCE OF PRELIMINARY INJUNCTION HEARING**

Defendant Bill Lee, Governor of the State of Tennessee, by and through the Office of the Tennessee Attorney General, files this Motion for Continuance of Preliminary Injunction Hearing. The Court set the hearing on Thursday, September 9, 2021, at 10:00 a.m. (ECF No. 21). Defendant moves the Court for a continuance of this setting. The Court also has before it at that same date and time a hearing on the application for preliminary injunction in *G.S. ex rel. Schwaigert, et al. v. Lee*, Docket No. 2:21-cv-02552-SHL-atc (“*Schwaigert*”).¹ On the surface it might appear that scheduling the two hearings together would promote judicial efficiency. But the two cases are distinct in their legal theories. *Schwaigert* involves alleged violations of individual Plaintiffs’ statutory rights under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 (as well as similar class allegations) whereas this case involves Shelby County’s constitutional objections to Defendant’s Executive Order as well as a claim

¹ To be clear, Defendant does *not* seek a continuance of the hearing scheduled in *Schwaigert*.

invoking the American Rescue Plan Act of 2021. Thus, it is unlikely that the proof in *Schwaigert* will inform the Court's analysis in this case (and vice versa) since the only apparent commonality is that Plaintiffs in both cases challenge the same Executive Order. If the Court denies preliminary injunctive relief to the *Schwaigert* Plaintiffs, Shelby County will not be prejudiced. If the Court grants preliminary injunctive relief to the *Schwaigert* Plaintiffs, Shelby County's ability to proceed will not be affected.

And it is not apparent that testimony will be required on Shelby County's motion. Rather, this case turns on legal questions that, again, are distinct from those in *Schwaigert*. The Court should be able to resolve Shelby County's application for preliminary injunctive relief through briefing by the able counsel for Shelby County and counsel for the State.

Time and timing are considerable factors for the Court to consider. Counsel for Shelby County has proposed to file its motion for preliminary injunction on Friday, September 3—the eve of the Labor Day holiday weekend. This shortens the available window for Defendant's responsive briefing to just two business days—near, if not past, the breaking point for Defendants' counsel, who are simultaneously preparing for the hearing in *Schwaigert*.

Given these constraints, counsel for the State are faced with insufficient time to consider and brief a response to Shelby County's anticipated memorandum. Fed. R. Civ. P. 1 advises the Court to employ its discretion “to secure the just, speedy, and inexpensive determination of every action and proceeding.” Defendant submits that the Court should grant a continuance of the hearing, and such other relief as may be just.

Respectfully submitted,

HERBERT H. SLATERY III
Attorney General and Reporter

s/James R. Newsom III
James R. Newsom (TN BPR No. 6683)
Special Counsel
Matthew R. Dowty (TN BPR No. 32078)
Assistant Attorney General
Robert W. Wilson (TN BPR No. 34492)
Assistant Attorney General
Office of the Tennessee Attorney General
40 South Main Street, Suite 1014
Memphis, TN 38103
(901) 543-2473
Jim.Newsom@ag.tn.gov
Matthew.Dowty@ag.tn.gov
Robert.Wilson@ag.tn.gov

CERTIFICATE OF CONSULTATION

I hereby certify that I am one of the counsel for Defendant Bill Lee, Governor of the State of Tennessee. On September 2, 2021, I conferred by telephone with Nathan A. Bicks, one of the counsel for Plaintiff Shelby County pursuant to LR7.2(a)(1)(B) concerning the relief requested by this motion. After consultation with Mr. Bicks, the parties are unable to reach an accord as to the relief requested by Defendant.

s/James R. Newsom III
James R. Newsom (TN BPR No. 6683)
Special Counsel

CERTIFICATE OF SERVICE

I hereby certify that on this the 2nd day of September, 2021, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing report. Parties may access this filing through the Court's electronic filing system.

s/Robert W. Wilson
Robert W. Wilson (TN BPR No. 34492)
Assistant Attorney General